

***REMARKS/ARGUMENTS******The Present Invention and the Pending Claims***

Claims 1-49 are pending currently. Claims 1-35 are directed to a two-phase composition comprising (a) an aqueous phase comprising an alcohol, (b) a silicone oil phase, and (c) guanine that is synthetic or isolated from fish scales, wherein the guanine is present at the interface of (a) and (b). Claims 36-49 are directed to a spray assembly.

***Summary of the Claim Amendments***

Claims 1 and 35 have been amended to recite that the guanine is synthetic or isolated from fish scales, as supported by the specification at, for example, paragraph [0020]. Claim 35 has been amended to replace the term “emulsifier” with “guanine,” as supported by the specification at, for example, paragraph [0009]. In addition, an obvious typographical error has been corrected in claim 49. Specifically, the preamble in claim 49 has been amended to recite a spray assembly. No new matter has been added by way of these amendments.

***Summary of the Office Action***

Claims 1-7, 9-11, and 15 have been rejected under 35 U.S.C. § 103(a), as obvious in view of U.S. Patent 3,920,883 (Yamada et al.). Claim 8 has been rejected under 35 U.S.C. § 103(a), as obvious in view of Yamada et al. in combination with U.S. Patent 4,992,262 (Nakagaki et al.). Claims 12-14, 16-26, and 30-49 have been rejected under 35 U.S.C. § 103(a), as obvious in view of Yamada et al. in combination with U.S. Patent 6,270,782 (Sawyer et al.). Claims 27-29 have been rejected under 35 U.S.C. § 103(a), as obvious in view of Yamada et al. in combination with U.S. Patent 5,384,114 (Dowell et al.) and U.S. Patent 6,203,807 (Lemann). Reconsideration of the pending claims is respectfully requested.

*Discussion of the Obvious Rejections**A. Claims 1-7, 9-11, and 15*

According to the Examiner, claims 1-7, 9-11, and 15 are obvious in view of Yamada et al. Yamada et al. allegedly discloses a two phase liquid composition comprising an oil phase, a water phase, an organic liquid miscible with water, and finely divided solid particles at the interface between the oil and water. Yamada et al. discloses that the solid particles can be fish scale powder, which is a source of guanine. The Examiner concedes that Yamada et al. does not exemplify a composition comprising silicone oil or guanine *per se* at the droplet interface. According to the Examiner, it would have been obvious to prepare a composition of the present invention based on the disclosure of Yamada et al., since Yamada et al. discloses silicone oil as a suitable oil.

Yamada et al. does not meet the features of the pending claims. Yamada et al. discloses a cosmetic composition comprising oil, water, organic liquid miscible in water, and finely divided solid particles (present specification, paragraph [0005]). The oil is dispersed in the form of spheres and the solid particles are substantially absorbed on the interface between the oil phase and the homogeneous mixture phase of the organic liquid and water.

Yamada et al. merely discloses the use of fish scales as the solid particles (col. 3, line 54, through col. 4, line 9). However, as described in the specification, fish scale powder is not the same as guanine, as fish scales contain a myriad of other components, which can affect the desired composition (present specification, paragraph [0020]). Thus, the fish scale powder disclosed by Yamada et al. cannot be considered guanine that is synthetic or isolated from fish scales, as required by the amended pending claims. There is simply no pointer in Yamada et al. to use or isolate guanine from the numerous other components in fish powder, let alone in combination with the precise silicone oil phase recited in the pending claims. Furthermore, Yamada et al. does not teach or suggest any other type or source of guanine.

Since Yamada et al. does not disclose or suggest all of the elements of the pending claims, claims 1-7, 9-11, and 15 are not obvious in view thereof. Applicant respectfully requests that the rejection over Yamada et al. be withdrawn.

*B. Claims 8, 12-14, 16-26, 30-35, 48, and 49*

The Examiner contends that claims 8, 12-14, 16-26, 30-35, 48, and 49 are obvious in view of Yamada et al. in combination with either Nakagaki et al., Sawyer et al., Dowell et al., and/or Lemann.

Independent claim 1 has been amended to recite, *inter alia*, that the guanine is synthetic or isolated from fish scales. As discussed above, Yamada et al. does not teach or suggest a composition in which the guanine is synthetic or isolated from fish scales, nor does it teach the use of synthetic or isolated guanine in combination with the precise silicone oil phase recited in the pending claims. Moreover, none of the other cited references, namely, Nakagaki et al., Sawyer et al., Dowell et al., and Lemann remedy the deficiencies of Yamada et al. Even Nakagaki et al., which discloses “fish scale guanine” (col. 2, lines 26-42), lacks the specific disclosure of guanine that is synthetic or isolated from fish scales. As such, the cited references do not recite all of the elements of dependent claims 8, 12-14, 16-26, 30-35, 48, and 49, and the obviousness rejections in view thereof are moot and should be withdrawn.

*C. Claims 36-47*

Claims 36-47 allegedly are obvious in view of Yamada et al. in combination with Sawyer et al. Yamada et al. discloses a two phase liquid composition, as discussed above, but fails to teach a spray assembly. Sawyer et al. describes a container comprising a spray pump, nozzle, and dip tube. The dip tube reportedly can be fluorinated polyethylene and does not extend into the composition. However, Sawyer et al. teaches that compositions can be prepared in which the oil droplets are on top of the water phase. According to the Examiner, this constitutes a teaching that the dip tube can extend into the oil phase of the composition, and hence meets the limitation of item c) in claim 36.

Claims 36-47 are directed to a spray assembly that is independent of its specific composition. Therefore, the following comments are directed to Sawyer et al., since the Examiner concedes that Yamada et al. does not teach or suggest a spray assembly, as recited in the pending claims.

Sawyer et al. does disclose an embodiment in which the oil phase droplets are lighter than the water phase and exist in a layer at the top of the composition (col. 1, lines 53-59).

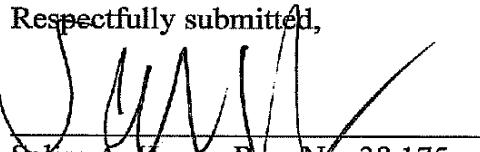
Sawyer et al. does not exemplify what type of container would be used for such composition. However, one of ordinary skill in the art would recognize that Sawyer et al. would *not* contemplate using a dip tube that extends into the composition when the oil layer is on top, since Sawyer et al. expressly discourages having the dip tube make contact with the oil droplets at all. As discussed previously, Sawyer et al. discloses that a spray mechanism with a long dip tube extending partly or entirely in the oil droplet layer *should not be used* because it disrupts the droplets, causing them to rupture, deform, smear, and spread (col. 4, lines 20-30). If a dip tube is to be used in the spray assembly of Sawyer et al., a “Stubby” dip tube can be employed that extends into the composition but “stops short of the droplet layer” to avoid disruption of the pearls (col. 4, lines 31-35). Thus, contrary to the Examiner’s contention, Sawyer et al. clearly teaches away from using a dip tube that extends into the region of the pearlized oil droplets of the composition, regardless of whether the oil droplets are on top or below the aqueous phase. To assert otherwise, is in direct contrast to the teachings of Sawyer et al. Since claims 36-47 require a fluorinated dip tube that extends from the pump assembly into the region of pearlized oil droplets of the composition, it cannot be said that the subject matter of claims 36-47 is obvious in view of Sawyer et al. alone or in combination with Yamada et al.

In view of the foregoing, Applicant maintains that all of the pending claims are not obvious over the cited references. It is requested that these rejections be withdrawn.

*Conclusion*

Applicants respectfully submit that the patent application is in condition for allowance. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



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Salim A. Hasan, Reg. No. 38,175  
LEYDIG, VOIT & MAYER, LTD.  
Two Prudential Plaza, Suite 4900  
180 North Stetson Avenue  
Chicago, Illinois 60601-6731  
(312) 616-5600 (telephone)  
(312) 616-5700 (facsimile)

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